



NOTICE OF ORAL AND WRITTEN  
EX PARTE PRESENTATION  
(47 C.F.R. § 1.1206)

March 3, 2005

VIA ECFS

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, NW  
Washington, DC 20554

*Re: National Association of State Utility Consumer Advocates' Petition  
For Declaratory Ruling Regarding Truth-in-Billing and Billing  
Format, CG Docket No. 04-208*

Dear Ms. Dortch:

Today, Jorge L. Bauermeister, Chairman of the National Association of Regulatory Utility Commissioners Committee on Consumer Affairs spoke separately by phone to the FCC's Scott Bergmann, Jessica Rosenworcel, Sam Feder, and Matt Brill.

During the course of those conversations, Mr. Bauermeister made specific reference to one or more of the following points:

- NARUC's resolution, attached as Appendix A, specifically "...urges that any order resulting from these proceedings should not preempt States from establishing more stringent standards for consumer protection." Preemption of additional State oversight of line items and billing formats, whether specified in the order, or suggested in the proposed rulemaking, is not in the consumer's benefit.
- 47 U.S.C. § 332 "rate" preemption is not the correct vehicle to preempt State authority on this matter. Expanding the definition of what constitutes "ratemaking" under that section to cover valid State exercises controlling billing format that have little to do with the recovery or rate charged an end-

user is inconsistent with the legislative history and the text of the Act. Federal law clearly preempts rate and entry regulation only. Just as clearly, the same provision of law specifically does not prohibit states from regulation other terms and conditions of service, which were described in the legislative history as including “such matters as customer billing information and practices and billing disputes”.

- This is an important issue and the parties did not have time to fully brief and or discuss the matter. The vote should be delayed. This would allow the Commission more time (i) to consider the possible chilling impact of the order and/or rulemaking’s tentative conclusions on State consumer protection initiatives and (ii) to receive additional input from NARUC’s member commissions and other interested parties.
- CTIA has already agreed in their code of conduct to segregate charges that are REQUIRED to be passed through to the consumer from those that they are ALLOWED to pass through. The FCC should capitalize and act on this point where all interested parties agree.
- Generally speaking, any FCC rulemaking must ensure that (1) Full and meaningful disclosure of all applicable surcharges is made at the time of execution of the service agreement between the company and the consumer as such disclosure is one of the keys to empowering the consumer to make an informed decision regarding its choice and that (2) Monthly invoices separate charges that law or regulation require to be passed through to consumers from those charges that are not mandated but are specifically authorized to be passed through to consumers.

According to both NARUC’s Resolution and Chair Bauermeister, NARUC agrees with the principles advanced in the NASUCA’s March 30, 2004, petition and supports an FCC investigation into the billing practices of the carriers with regard to such surcharges. We do not support measures that preempt a States ability to provide consumers with additional protections.

Please do not hesitate to contact me at 202.898.2207 or [jramsay@naruc.org](mailto:jramsay@naruc.org), if you have any questions about the forgoing.

Respectfully Submitted,

James Bradford Ramsay  
NARUC General Counsel

***Resolution Concerning the Truth-In-Billing Petition filed at the Federal Communications Commission by the National Association of State Utility Consumer Advocates (NASUCA)***

**WHEREAS**, Some State Commissions have seen a trend where some wireline and wireless telecommunications carriers impose separate monthly surcharges and fees that are not mandated or specifically authorized by the Federal and/or State governments to be passed through to consumers; and

**WHEREAS**, Some States have reported that consumers frequently complain about these monthly surcharges on their telecommunications bills and that the explanation provided by the carriers for the charges sometimes is inadequate; and

**WHEREAS**, These monthly surcharges, as described by carriers, may be misleading by implying that the fees are not only the product of government regulation but are sanctioned or required by either Federal or State governments; and

**WHEREAS**, Many consumers do not discover the full cost of their telephone service until they receive their monthly bills; and

**WHEREAS**, Some carriers' monthly surcharges may violate the FCC's Truth-In-Billing Order's requirement that carrier bills "contain full and non-misleading descriptions of the charges that appear therein"; and

**WHEREAS**, On July 30, 2003, the National Association of Regulatory Utility Commissioners (NARUC) Board of Directors adopted a resolution stating that NARUC has numerous concerns regarding the current practice of some wireless carriers imposing separate explicit charges for Federally mandated programs such as enhanced 9-1-1 service, local number portability, number pooling, and Universal Service programs funding; and

**WHEREAS**, On July 30, 2003, the NARUC Board of Directors adopted a resolution encouraging the FCC to conduct a proceeding to determine whether its existing Truth-in-Billing rules should be revised to address wireless carriers' current billing practices; and

**WHEREAS**, On July 31, 2002, the NARUC Board of Directors adopted a resolution urging that a Consumer Bill of Rights be developed for consumers of all telecommunications services that should include the right of consumers to receive clear and complete information regarding rates, terms and conditions for services; and

**WHEREAS**, On March 30, 2004, NASUCA filed a petition with the FCC detailing wireline and wireless carriers' practices with respect to such monthly surcharges and fees and asking the FCC to enter an order addressing this problem.

**WHEREAS**, On May 25, 2004, the FCC established a pleading cycle to consider NASUCA's petition and docketed NASUCA's petition as CG Docket No. 04-208; now therefore be it

**RESOLVED**, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened in its 2004 Summer Meetings in Salt Lake City, Utah, opposes the imposition of monthly surcharges that are not mandated or specifically authorized by law or regulation to be passed on to the consumer; and be it further

**RESOLVED**, That NARUC believes that a clear, full and meaningful disclosure of all applicable surcharges should be made at the time of execution of the service agreement between the company and the consumer as such disclosure is one of the keys to empowering the consumer to make an informed decision regarding its choice; and be it further

**RESOLVED**, That NARUC believes that monthly invoices should separate charges that law or regulation require to be passed through to consumers from those charges that are not mandated but are specifically authorized to be passed through to consumers; and be it further

**RESOLVED**, That NARUC agrees with the principles advanced in the NASUCA's March 30, 2004, petition and supports an FCC investigation into the billing practices of the carriers with regard to such surcharges; and be it further

**RESOLVED**, That NARUC urges that any order resulting from these proceedings should not preempt States from establishing more stringent standards for consumer protection; and be it further

**RESOLVED**, The NARUC General Counsel is directed to file comments in support of the NASUCA petition and take any appropriate action to further the intent of this resolution.

---

*Sponsored by the Committee on Consumer Affairs*  
*Adopted by the NARUC Board of Directors, July 14, 2004*